

Oscar Michelen

From: Oscar Michelen
Sent: Wednesday, October 31, 2007 3:49 PM
To: 'Francois, Mikhal'
Subject: RE: ACS v. Michelle Marshall - 07cv7352 (S.D.N.Y.)

Dear Mikhal:

Attached is the stipulation of settlement in this matter. I direct your attention to paragraphs 6, 7 and 8 of the agreement. I have also attached my brief in response to your appeal of Judge Solomon's intervention order. Also enclosed is my letter to your predecessor where I cite the specific language at issue here. I believe the language of the policy and the applicable case law clearly establishes that ACS may not obtain any recovery from Ms. Marshall's settlement.

I reiterate my willingness to accept service on behalf of Ms. Marshall and to extend, if necessary, your time to serve the complaint as well.
Please call me after your review of the documents.

Oscar Michelen

Oscar Michelen
SANDBACK, BIRNBAUM & MICHELEN, LLP
Two Pennsylvania Plaza
Suite 1996
New York, NY 10121
(212)517-3200 fax: (212)279-3509

200 Old Country Road
Suite 2 South
Mineola, NY 11501
(516)248-8000 fax: (516)741-9398

From: Francois, Mikhal [mailto:mfrancois@daypitney.com]
Sent: Tuesday, October 30, 2007 5:22 PM
To: Oscar Michelen
Subject: ACS v. Michelle Marshall - 07cv7352 (S.D.N.Y.)

Oscar,

Thanks again for returning my calls. As we discussed in our call today, I would appreciate if you could send me by email a copy of Ms. Marshall's settlement agreement in the tort action as well as your intervention response. Also, please confirm your agreement to accept service of the complaint on behalf of Ms. Marshall and your agreement to extend the time for service if requested, so that we can review your claims regarding ACS's lien.

Sincerely,
Mikhal

1/25/2008

Mikhal Francois
Attorney at Law
Day Pitney LLP
7 Times Square | New York NY 10036-7311
| t (212) 297 2430 | f (718) 210 0632 | c (646) 416 3551
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notify the sender by immediate reply and delete the original message. Thank you.

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From: Francois, Mikhal [mfrancois@daypitney.com]
Sent: Wednesday, October 31, 2007 3:53 PM
To: Oscar Michelen
Subject: RE: ACS v. Michelle Marshall - 07cv7352 (S.D.N.Y.)

Dear Oscar,

Thank you for your email. I will contact you once I review the documents.

Mikhal

Mikhal Francois
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From: Oscar Michelen
Sent: Wednesday, October 31, 2007 4:57 PM
To: 'Francois, Mikhal'
Subject: RE: ACS v. Michelle Marshall - 07cv7352 (S.D.N.Y.)

Here's the brief and letter in a different format, let me know if there's any problems opening it. They were originally written in wordperfect.

Oscar Michelen

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From: Francois, Mikhal [mailto:mfrancois@daypitney.com]
Sent: Wednesday, October 31, 2007 4:47 PM
To: Oscar Michelen
Subject: RE: ACS v. Michelle Marshall - 07cv7352 (S.D.N.Y.)

Dear Oscar,

I am having difficulties opening your brief and letter (they appear to not be in word doc. format). Can you please resend these documents?

Thank you again,
Mikhal

-----Original Message-----

From: Oscar Michelen [mailto:OMichelen@sbmlegal.com]
Sent: Wednesday, October 31, 2007 3:49 PM
To: Francois, Mikhal
Subject: RE: ACS v. Michelle Marshall - 07cv7352 (S.D.N.Y.)

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1/25/2008

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May 23, 2006

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CHANG YUN*
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SUSAN J. KUSCHEL
OFFICE MANAGER

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PLEASE RESPOND TO:
☒ MINEOLA
☐ NY

Re: Michelle Marshall

Dear Mr. Butash:

In response to your letter of this date, please be advised that the position of the plaintiff on this matter has not changed.

While you are correct that the United States Supreme Court's ruling in *Sereboff* established a Federal cause of action under ERISA, the decision was based upon the language of the policy in question. As the Court's decision notes:

[T]he "“Acts of Third Parties”" provision in the Sereboffs' plan specifically identified a particular fund, distinct from the Sereboffs' general assets-“[a]ll recoveries from a third party (whether by lawsuit, settlement, or otherwise)” -and a particular share of that fund to which Mid Atlantic was entitled-“that portion of the total recovery which is due [Mid Atlantic] for benefits paid.”"

There is no such provision in this policy. Instead, there is specific language that states

[CIGNA] will only exercise its subrogation rights if the amount received by you is specifically identified in the settlement or judgment as amounts paid for medical expenses.

Please let me know how you equate the language in the *Sereboff* policy with the language in your policy. Under these circumstances, it would appear that any ERISA lawsuit brought by your client would be baseless and frivolous.

Accordingly I ask that you reconsider your position.

Very truly yours,

OSCAR MICHELEN

OM:sjk